

REMARKS

In the Office Action dated January 27, 2003, claims 1-17 are pending and all claims are rejected. Applicant requests reconsideration for at least the reasons discussed herein.

Applicant appreciates the courteous telephone conference extended to Applicant's attorney on April 16, 2003 by Examiners Banks and Cegielnik. During the telephone conference, the history of the prosecution was reviewed including the previous telephone interview extended by Examiners Cegielnik and Muir on July 31, 2001. Also, discussed were previous cited references and the newly cited French Publication No. 2640886.

During the telephone conference, it was determined that Applicant's amendment filed with Certificate of Facsimile Transmission dated February 5, 2002 was not entered due clerical oversight. Thus, Examiner Banks stated that the present Office Action did not address the claims as amended. Claim 1 as previously amended is set forth above. Claim 1 was discussed and it was agreed that none of the prior art of record would make claim 1 not patentable. Examiner Banks suggested that a decision would be made within a few days regarding how to move forward and I should call Examiner Cegielnik On April 21. After calling Examiner Cegielnik on April 21 and again on succeeding days, on April 24, 2003 Examiner Cegielnik left me a message that she had found a new reference, US 3,788,510, and I should call Examiner Banks.

I obtained a copy of U.S. 3,788, 510 and found that it disclosed a container closure that did not meet the requirements of claim 1, nor was there any suggestion for the presently claimed amusement and stress relief device. I have called Examiner Banks several times but have not been able to reach him.

French Publication '886 describes a jumping toy ("jouet sauteur"). In use, it is inverted and placed on a surface. Immediately upon inversion its elastic material starts to return to its original shape. As the return to its original shape continues, the material suddenly snaps back to the original shape causing the toy to jump.

This reference is very similar to Davis (US 2,153,957) one of the first prior art references cited during the prosecution and subsequently withdrawn.

The present invention is directed to and claims an amusement and stress relief device formed of a flexible, resilient polymeric material having a center portion with a concave/convex shape, wherein the device has **two stable equilibrium positions** wherein a first equilibrium position comprises a first surface having a concave shape and a second surface having a convex shape and a second equilibrium position is the reverse or inverse of the first equilibrium position and comprises the second surface having a concave shape and the first surface having a convex shape, whereby manual manipulation of the device inverts the first and second surfaces between the two stable equilibrium positions, as set forth in claim 1. In other words, the second stable equilibrium position is the reverse or inverse of the first stable equilibrium position.

The device of the present invention **requires** manual manipulation to be moved from one stable equilibrium position to the other, no matter which stable equilibrium position it is in. Further, the two equilibrium positions have substantially the same shape or appearance.

The nature of the present invention can be readily seen by examining the samples of the device that were previously submitted.

None of the cited references teach or suggest the presently claimed device. All of the cited references **fail** to teach or suggest a device having **two stable equilibrium positions** wherein a first equilibrium position comprises a first surface having a concave shape and a second surface having a convex shape and a second equilibrium position is the reverse or inverse of the first equilibrium position and comprises the second surface having a concave shape and the first surface having a convex shape, whereby manual manipulation of the device is required to invert the first and second surfaces between the two stable equilibrium positions, as set forth in claim 1. Further, none of the references teach a device wherein **two equilibrium positions have substantially the same shape or appearance.**

It is respectfully submitted that the orally cited US 3,788,510 also is deficient in at least the above respects. In addition, it is a wholly different subject matter.

Thus, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of any prior art of record, whether each taken alone or in any combination.

In view of the interview and the discussion above, it is respectfully submitted that the present application is in condition for allowance.

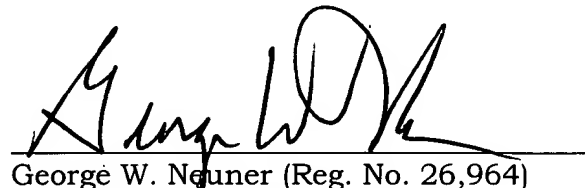
Further, it is respectfully submitted that, in view of the interview and failure of the Office to enter timely the previous amendment to claim 1, the present Office Action should be withdrawn and there should be a refund of the fee for a one month extension of time submitted with this paper. It is requested that this be considered a request for such action.

An early reconsideration and notice of allowance are earnestly solicited.

Respectfully submitted,

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